

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

E. Kwan Choi,  
*individually and on behalf of*  
Urantia Foundation, *et al.*,  
*plaintiff,*

*v.*

K. Richard Keeler, *et al.*,  
*defendants.*

**No. 02 CH 04053**

**In Chancery**

**Injunction  
Temporary Restraining Order**

**Judge Sophia H. Hall**

**MOTION TO STRIKE DEFENDANTS'  
MOTION TO RECONSIDER**

Now comes the plaintiff, Dr. E. Kwan Choi, by his attorneys, Michael D. Poulos, P.C., individually and on behalf of the Urantia Foundation, *et al.*, moves to strike the Motion to Reconsider presented (but not filed) by the defendant trustees herein. In support of his motion the Dr. Choi states as follows:

**ARGUMENT IN BRIEF**

1. The defendant trustees raise as “newly discovered evidence” a letter dated December 29, 1983, initiating removal of a trustee.
  - a. This letter is not “newly discovered evidence which was not available at the time of hearing.” It is an official document of the Urantia Foundation of which certain defendants are trustees. The defendant trustees’ law firm, Gardner, Carton & Douglas, also represents the Urantia Foundation. As set forth in the attached affidavit of Martin Myers, one of the signers of that letter, Quin Fraser of the law firm of Gardner, Carton & Douglas assisted in the drafting of that letter. In fact, suspending the trustee being removed was his idea. A letter which one of the attorneys for the defendant trustees helped draft

cannot be “newly discovered evidence.” This evidence could have been presented before.

- b. For the reasons more fully argued below, this letter is not competent evidence of anything. The Declaration of Trust and By-Laws are clear and unambiguous, and one cannot look to external hearsay to modify these documents.

2. The defendant trustees raise no new legal arguments. Instead they restate arguments already extensively briefed, argued, and rejected by the court:

- a. The defendant trustees cite to the words “presently qualified and acting Trustees” from the “Certificate of Removal of Trustee” to suggest that there must by implication already be a removed trustee. In doing so they ignore the entire language of the form. The relevant clause states as follows:

THEREFORE, the undersigned being all the presently qualified and acting Trustees of URANTIA Foundation, *except the Trustee hereby removed....*

*Emphasis added.*

The clause “except the Trustee hereby removed” makes it clear that the trustee is removed with the filing of the certificate, not before. No matter how many times the defendant trustees quote and underline the phrase remaining trustees, they cannot make the phrase mean a trustee is suspended or removed until the requirements of Section 2.4 of the By-Laws have been satisfied.

During argument the court repeatedly asked where in the Declaration of Trust or By-Laws mention was made of suspending a trustee or reinstating a removed trustee. The defendant trustees could not cite to such language then, and they fail to do so now.

- b. The defendant trustees again argue that, because Dr. Choi objected specifically to rescheduling the October 20, 2001 meeting to October 26, 2001, without making a blanket objection to any other date, he somehow consented to rescheduling the meeting to November 10, 2001 notwithstanding his written objection to the contrary. The court has already rejected this argument.

### **ARGUMENT WITH LEGAL AUTHORITIES**

1. On August 23, 2002 the court entered partial summary judgment in favor of Dr. Choi and entered a declaration that he is now and, since his election, has been a trustee of the Urantia Foundation. The court's decision was based on the provisions of the Declaration of Trust and the By-Laws as applied to the uncontested facts before it. The court held that the defendant trustees violated the By-Laws by unilaterally rescheduling a regular quarterly meeting without Dr. Choi's consent. Since the meeting was not lawfully rescheduled, the business of removing Dr. Choi as a trustee was not then properly undertaken, and the attempt to remove him was invalid.

2. The defendant trustees have moved the court to reconsider its decision. The defendant trustees make no new arguments in support of reconsideration. Instead they argue that "newly discovered evidence" requires the court to vacate the partial summary judgment, and they repeat arguments already considered and

rejected by the court. The defendant trustees have not made the minimal required showing to support a motion to reconsider, and the motion should be stricken.

3. A motion to reconsider is proper where the movant can show: “newly discovered evidence which was not available at the time of hearing; changes in the law; or errors in the court’s previous application of existing law.” *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 987, 518 N.E.2d 424, 429 (1<sup>st</sup> Dist. 1987) (motion to reconsider fee petition not proper where motion unsupported by previously unknown or unavailable evidence). A motion to reconsider is addressed to the sound discretion of the trial court. *Robidoux v. Oliphant*, – Ill. 2d –, 2002 WL 134900 (Doc. No. 91072, June 20, 2002). A motion to reconsider which does not raise new evidence or changes in the law is properly denied. *Broadnax v. Morrow*, 326 Ill.App.3d 1074, 1082, 762 N.E.2d 1152, 261 Ill.Dec. 225 (4 Dist. 2002.).

4. Where the issue is new evidence, “reconsideration is not warranted unless the newly discovered evidence is of such conclusive or decisive character as to make it probable that a different judgment would be reached.” *Patrick Media Group, Inc. v. City of Chicago*, 255 Ill.App.3d 1, 8, 626 N.E.2d 1066, 1072, 193 Ill.Dec. 515, 521 (1<sup>st</sup> Dist. 1993). In *Patrick Media Group* the court properly rejected the CTA’s motion to reconsider a summary judgment based on “newly discovered” documentary evidence in a suit for reformation of contract. The CTA stated that the evidence was not previously presented because the secretary was not familiar with the records, and it was only after counsel met with a former secretary that the records were finally discovered. The CTA argued that the new evidence established that the parties did not agree to a contract with an automatic extension provision, and as a result, reformation of contract to include such a provision was not warranted.

5. The appellate court rejected CTA's argument for reconsideration on two separate grounds. First, the new evidence did not rebut the existence of the automatic extension provision, and as such it could not affect the outcome of the case. Second, the CTA failed to show due diligence in bringing the evidence to the attention of the court. The court wrote: "it appears from the nature of the new evidence that it was in CTA's possession and could have been presented before judgment was entered." *Id.* 255 Ill.App.3d at 9, 626 N.E.2d at 1072, 193 Ill.Dec. at 521.

6. Here the "newly discovered evidence" is hearsay within hearsay, probative of nothing, and known all along to counsel for the defendant trustees. In 1983 for the first time, removal proceedings were initiated against a trustee. Quin Fraser, now one of the attorneys for the defendant trustees, suggested that the trustee being moved should be suspended.

7. The court has already found there is no support for this position in the Declaration or the By-Laws. The existence of the letter does not change the facts or the law supporting the court's award of summary judgment. Had the letter been an unknown amendment to the Declaration of Trust or the By-Laws, it would have been highly material and might have changed the court's ruling, but this is not the case here. As for the suggestion the letter signed by two of the settlors reflects the intent of all five settlors 33 years before, this is clearly not the case. As indicated in the affidavit of Martin W. Myers, suspension of a trustee was Quin Frazer's idea.

8. Because this letter has no bearing on the outcome of this case, it does not support a motion to reconsider. *Patrick Media Group, Inc. v. City of Chicago*, 255 Ill.App.3d 1, 8, 626 N.E.2d 1066, 1072, 193 Ill.Dec. 515, 521 (1<sup>st</sup> Dist. 1993).

9. The defendant trustees have always asserted that parole evidence is irrelevant. This letter is parole evidence. The case must turn on the language within

the “four corners” of the Declaration and By-Laws. The only “new evidence” that could serve to show error would have to be directed at the Declaration and By-Laws considered by the court; for example: that the court reviewed an erroneous copy of the Declaration of Trust and By-Laws or that pages were missing from the copies presented to the court. The defendant trustees do not assign these types of error.

10. The defendant trustees have made no showing of the required due diligence to bring the “newly discovered evidence” to the attention of the court. As shown by the affidavit of Martin W. Myers, the existence of this document has been known to counsel for the defendant trustees for 19 years.

11. The motion for reconsideration sets forth no basis to support a motion to reconsider. The defendant trustees simply recast the same arguments they made on summary judgment. There is no allegation that the court misapplied the law or that the law has changed since the decision was rendered. No competent new evidence is advanced, and no diligence in the discovery of such evidence as is presented has been shown.

Wherefore, E. Kwan Choi prays the court to strike the Motion to Reconsider presented by the defendant trustees.

Respectfully Submitted:

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